
FINDING AND RECOMMENDATION(S)

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Finding:

Many critically needed fuel reduction projects located in stream environment zones (SEZs) require the use of mechanical equipment in order to be completed. However, existing regulatory permitting procedures and restrictions on the use of such mechanized equipment in SEZs are impediments to fuels removal projects in such areas. Fuels removal projects in SEZs can be effectively accomplished using mechanized equipment and ground protection techniques of a kind and in a manner that will adequately mitigate short-term soils compaction and disturbance, thereby reducing negative water quality impacts from such activities. Completion of these projects, to the extent made possible by the capabilities and efficiencies of readily available mechanized equipment, will provide long-term protection of water quality from the effects of catastrophic fire affecting large areas of the Tahoe Basin than would be possible if such readily available mechanized equipment is continued to not be permitted to be used in the SEZs.

Background and Supporting Evidence:

SEZs in the Lake Tahoe Basin pose both extreme fire risks and extraordinary environmental challenges. In times of fire, such as both the Pioneer Fire and the Angora fire, the fires quickly changed from surface fires to crown fires because untreated SEZs allowed fire to quickly move through overstocked and insect diseased forested areas. Commentators have referred to the SEZs in these areas as operating like a candle wicks during times of fire, advancing the severity of crown fires. SEZs are also pathways through which sediment travels into the Lake, thereby directly affecting Lake clarity.

Removal of fuels from and restoration of SEZs is necessary in order to reduce fire hazards, particularly in SEZs located within or leading into or out of communities, and within the Wildland Urban Interface (WUI) surrounding such communities. For example, in Lake Valley Fire District the fuel reduction treatment needed in SEZs comprise over 40% of the project area. Unless such efforts are quickly undertaken, the SEZs will continue to pose significant and unacceptable fire risks to communities in the Lake Tahoe Basin.

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Protection of the Lake's clarity should continue as one of TRPA's top priorities, but it is not and should not be the only priority of the TRPA and the potentially devastating impacts of catastrophic fire on the clarity of the Lake's water should not be overlooked by the TRPA and other agencies having jurisdiction over environmental matters affecting the Tahoe Basin. Protection of life and property from catastrophic fire is and should be of greater priority to the TRPA and other agencies having jurisdiction over environmental matters within the Lake Tahoe Basin. Further, given the fire hazards posed to communities within the Basin by untreated SEZs, there are substantial and unnecessary risks posed by fire within and surrounding the populated areas within the Basin.

In the past, many fuel reduction projects contained within SEZs have either not been performed due to regulatory restrictions on the use of mechanized equipment or were required to be performed by hand, leaving burn piles in areas immediately adjacent to the SEZ for future elimination. Many areas needing fuel reduction treatments were simply not treated because hand-thinning methods were either unsafe or too expensive, or were not feasible due to the sizes of the trees needing removal. Many burn piles of accumulated fuel materials have been left unattended adjacent to SEZs because of restrictions on the use of vehicles and readily available fuels treatment equipment. The need to carry burn pile materials out, as opposed to burning them in place, has been a further cost prohibitive issue for projects in SEZs.

Even though Lahontan Region Water Quality Control Board (LRWQCB) regulations have allowed limited exemptions for use of equipment in SEZs since 1994, only 4 projects have been brought before the LRWQCB Board for action. The reason for so few projects is that all were pilot projects, and the conditions for use of innovative technology vehicles acceptable to LRWQCB have proven to be so cost prohibitive as to amount to a prohibition of any vehicles within SEZs. In testimony, LRWQCB staff has stated that they weren't willing to challenge themselves with more difficult equipment use projects. Specifically, they would not take the time to define innovative technology vehicles and/or were unwilling to accept project proponent arguments that existing, proven, low impact equipment met the LRWQCB requirement as being innovative.

Similarly, there are no quantitative measures or BMP's to address the vague codified requirements of "significant soil disturbance", "sufficiently dry" or "minimize compaction" leaving project implementers with great uncertainty in designing project implementation and monitoring requirements. Several proponents of SEZ treatment projects have indicated that they were informed by LRWQCB staff that their projects would not be permitted under timber waiver procedures. Discussions with proponents indicate that this dialogue has resulted in at least 50 SEZ clearance projects being dropped or simply not pursued. A minor 23-acre USFS pilot project required over a year and a half of negotiations

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before being approved. The LRWQCB applies the standard of “no permanent soil disturbance” in analyzing requests for SEZ treatment projects, while arbitrarily interpreting the word “permanent” as constituting an impact that is of “less than a year” in duration. The word “permanent”, by any common definition, means something that is perpetual, constant, unchanging, and everlasting. Such subjective interpretations by the LRWQCB of terms that are seemingly quite clear by common definition, have resulted in misunderstandings and confusion by the public and those who must comply with such apparently subjective standards.

In fact, very few projects have been approved that allow for the use of vehicles and equipment in SEZs due to complexities and delays in the permitting process and the lack of availability of low impact equipment meeting the restrictive standards applied by the LRWQCB and/or TRPA. Private fuels removal contractors are generally unwilling to undertake SEZ clearance projects due to the complexities and delays in the permitting process and the inconsistent and subjective interpretations of standards that must followed within SEZs.

Recommendation(s)

Recommendation 1: Until the risk of catastrophic fire is significantly reduced or eliminated in the Tahoe Basin, the Governors of the States of California and Nevada should direct their respective state agencies having jurisdiction in the Basin to consider fire hazard reduction an overriding priority when considering applications for use of mechanized equipment for hazardous fuels reduction projects.

Impacts of Implementation: *(The implementation of any Recommendation is likely to have specific impacts. Consider potential consequences related to each of the following areas):*

Analysis of impacts on the following factors is REQUIRED (Best Estimate):

- ✗ Cost B Expected to reduce average cost/acre for work, but analysis is needed.
- ✗ Funding source B Existing fuels reduction funding sources.
- ✗ Staffing B Existing project planning and management staffing, with work probably made easier by ability to use equipment instead of managing manual treatment and burn piles.
- ✗ Existing regulations and/or laws B Modified based on finding and actions of Governors.

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Analysis of impacts on the following factors is OPTIONAL:

- ☐ Operational
- ☐ Social
- ☐ Political
- ☐ Policy
- ☐ Health and Safety
- ☐ Environmental
- ☐ Interagency